

- B. The Examiner basically seems to be arguing that:
- i. Sonnenschein teaches all features of claim 1 of the present application with the exception of:
    - a. curved surfaces to the anvil and cartridge, which is taught by Jankowski; and
    - b. a lower level in the cartridge located above the array of staples, which is taught by Bolanos; and
  - ii. It would have been obvious to one of ordinary skill in the art to combine the teachings of these three documents to arrive at the present invention.
- C. The Applicant respectfully traverses the Examiner's arguments with respect to Bolanos:
- i. The Examiner wrote: "Bolanos teaches a cartridge 24, 38 having an upper level and a lower level, where the lower level is above the array of staples for the purpose of keeping anvil 26 aligned with the cartridge as it is brought into close proximity with the staple cartridge."
  - ii. It is respectfully submitted that the function and therefore the structure of the elevated portion of the cartridge 24 of Bolanos is not to assist alignment for the following reasons:
    - a. The numeral 38 in Bolanos, which the Examiner has, it is believed, mistakenly identified as designating a cartridge, actually designates a cartridge frame that is rigidly attached to the distal end of flexible portion 18 of the fastening instrument 10. A cartridge 24 comprising staples is disposed in cartridge frame 38 such that the cartridge can not move. A stapler anvil 26 is pivotably attached to cartridge frame 38 by means of pivot pin 27. Activating a roller assembly 34 causes anvil 26 to pivot about pin 27 bringing the stapler from an open configuration to a closed one in which the anvil is parallel to the cartridge. "In the closed position roller assembly 34 is over-center and provides sufficient force to hold anvil 26 in place during firing of the staples." [col. 6, lines 3-6]
    - b. Once the structure and function of the parts of the stapler of Bolanos that are described in the previous paragraph is understood it becomes obvious that the purpose of the upper and lower levels of the Bolanos' cartridge is unable help in alignment. In fact, because both the cartridge and anvil are held in a fixed relationship both longitudinally and transversely (with respect to the longitudinal axis of the device) by the cartridge frame, there is no possibility of misalignment in either direction.
    - c. The elevated portion of Bolanos' cartridge 24 apparently is shaped to fulfill two functions: Firstly to act as a stop insuring that in the closed position the anvil and cartridge surface are exactly parallel and the correct distance apart to allow proper firing and closing of the staples. Secondly to provide a rigid surface against which the roller assembly can force the anvil to hold it in place during the staple firing.
    - d. In the present invention both of these functions are fulfilled by the locking screws. In other words, a skilled person might hypothetically learn an unworkable (in the context of the stapling device of the present invention) alternative to the locking screws from Bolanos; but he would not learn anything from Bolanos that would help to solve the alignment problems that sometimes exist with the device of Sonnenschein.

D. The Examiner has not divulged prior art that allegedly teaches all limitations of claim 1:

- i. "... the upper level comprises two sections that are located at the proximal and distal ends of said cartridge ...." This limitation is not taught in any of the cited prior art.
- ii. "... the lower level is located in the center of said cartridge ...." This limitation is not taught in any of the cited prior art.
- iii. "... said lower level has a length a little longer than the width of the face of said anvil ...". This limitation is not taught in any of the cited prior art.
- iv. "... said two sections of said upper level are connected to said lower level by means of two sloping walls ...." This limitation is not taught in any of the cited prior art.

E. In replies to previous Office Actions the Applicant has argued that, at the time of the invention, the technical problem to which the present invention provides a solution, i.e. achieving both longitudinal and transverse alignment of a stapler cartridge located on one end of an articulation section with an anvil located on the other end exclusive relates to the invention taught in the patent application by Sonnenschein. It appears the Examiner has not commented or given any weight to that argument. It is inconceivable to the Applicant that any person of the art would combine the teachings of three prior art publications in the manner suggested by the Examiner in order to provide a solution to a problem that this hypothetical person didn't even know existed.

2. Conclusion: Claim 1 - and claims 2, 6-7, and 9-10 that are either directly or indirectly dependent upon it - is inventive over the cited prior art for the following reasons:

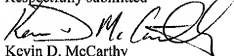
- A. The cited references fail to disclose, teach or suggest all the claim 1 limitations;
- B. The cited references, even if combined as suggested by the Examiner, would not experience the problems that are solved and identified in the claimed invention; and
- C. The cited references do not provide any reason why a person of ordinary skill in the art at the time of the invention would have combined the prior art elements in the manner claimed.

It is respectfully submitted that the claims and application are in condition for allowance and it is earnestly solicited that such allowance be granted.

--4--

If an allowance is not forthcoming in reply to this response, it is respectfully requested that the examiner schedule a telephone conference with the applicant's representative, so the applicant's representative, the examiner and the supervising primary examiner can discuss the merits of this case prior to a second office action.

Respectfully submitted



Kevin D. McCarthy

Reg. No. 35,278

Roach, Brown, McCarthy & Gruber, P.C.  
1920 Liberty Building - 424 Main Street  
Buffalo, New York 14202